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KERALA STATE ELECTRICITY REGULATORY COMMISSION THIRUVANANTHAPURAM

NOTIFICATION

No. 3279/Con.Engg/2023/KSERC.

Dated, Thiruvananthapuram, 27th February, 2024.

In exercise of the powers conferred under sub-section (1) of Section 181, read with Section 61 of the Electricity Act, 2003 (Central Act 36 of 2003), and all other powers enabling it in this behalf and after previous publication; the Kerala State Electricity Regulatory Commission hereby makes the following Regulations to amend the Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2021, namely:—



**THE KERALA STATE ELECTRICITY REGULATORY COMMISSION
(TERMS AND CONDITIONS FOR DETERMINATION OF TARIFF)
(SECOND AMENDMENT) REGULATIONS, 2024**

1. *Short Title and Commencement.*—(1) These Regulations shall be called the Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) (Second Amendment) Regulations, 2024;

(2) These Regulations shall come into force from the date of publication of the same in the Official Gazette of the State of Kerala.

2. *Amendments in the Principal Regulations.*—In the Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2021;

A. Regulation 34 (iv) of the Draft Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2021 notified on 6th August, 2021 is provided as below:

34. (iv) Only the payment of interest on the bonds issued to the Master Trust will be approved for computation of Aggregate Revenue Requirement and the amount of repayment of such bonds shall not be reckoned for computation of Aggregate Revenue Requirement;

B. Subsequently after the stakeholder consultation and public hearing held on 15-9-2021, the Commission has finalized Regulation 34 (iv) of the Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2021 as below:

34. (iv) The amounts required for the payment of interest on the bonds issued to the Master Trust and for the principal repayment of such bonds shall be reckoned for computation of Aggregate Revenue Requirement and for truing up of accounts;

The final KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2021 was notified on 16th November 2021, and published the same in the official Gazette on 22nd November 2021.

C. In the Writ Petition WP(c) No. 19205 of 2023 filed by ‘the Kerala High Tension & Extra High Tension Industrial Electricity Consumers’ Association’,

Hon’ble High Court vide the Order dated 7th September, 2023 has set aside Regulation 34(iv) of the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2021, to the extent it differs from the draft published on 6th August 2021, due to the reasons that changes made in the draft does not conform to the requirements of Section 181(3) of the Electricity Act, 2003 and the Electricity (Procedures for Previous Publication) Rules, 2005. Accordingly, in view of the



Judgement of the Hon'ble High Court dated 7th September, 2023, clause (iv) of Regulation 34 of the said Regulation stand modified as below:

34(iv) The amounts required for the payment of interest on the bonds issued to the Master Trust shall only be reckoned for computation of Aggregate Revenue Requirement and for truing up of accounts;

D. Now, in view of the liberty granted by the Hon'ble High Court in the Order dated 7th September, 2023 to specify the terms and conditions for the determination of tariff as regards repayment of principal amount on Master Trust Bonds after complying with the requirement of Section 181 (3) of the Electricity Act, 2003 and the Electricity (Procedures for Previous Publication) Rules, 2005 and in accordance with law, the Commission substitute clause (iv) of Regulation 34 of the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2021 as follows:

34(iv) The amounts required for the payment of both the principal and interest on the bonds issued to the Master Trust from time to time and which are serviced by KSEB Ltd. shall be reckoned for computation of Aggregate Revenue Requirement and for truing up of accounts of KSEB Ltd.

By order of the Commission,

C. R. SATHEESHCHANDRAN
Secretary.

Explanatory Memorandum

(This does not form part of the notification, but is intended to achieve the general purport.)

1. The Commission, by invoking the powers conferred on it under sub section (1) of Section 181 read along with Section 61 of the Electricity Act, 2003, had notified the draft of the Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2021 on 6th August, 2021 (herein after referred to as Draft Tariff Regulations, 2021).
2. The Regulation 34(iv) of the Draft Tariff Regulations, 2021, deals with the repayment of the principal and interest of the KSEB Ltd. bonds issued to the Master Trust constituted for meeting the pension liabilities of the pensioners of KSEB Ltd., which read as follows:



“34. (iv) Only the payment of interest on the bonds issued to the Master Trust will be approved for computation of Aggregate Revenue Requirement and the amount of repayment of such bonds shall not be reckoned for computation of Aggregate Revenue Requirement;

3. As mandated under Section 181 (3) of the Electricity Act, 2003 and the Electricity (Procedures for Previous Publication) Rules, 2005, the Commission had published the draft Tariff Regulations, 2021 in its website for information of the stake holders and to invite their comments. The Commission had also conducted public hearings on the matter on 15-9-2021. Duly considering the objections and suggestions of the various stake holders on the Draft Tariff Regulations, 2021, the Commission had finalised the Draft Tariff Regulations, 2021 on 16th November, 2021 and the final KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2021 (hereinafter referred to as Tariff Regulations, 2021) was notified at Commission's website on 16th November 2021, and published the same in the Official Gazette on 22nd November 2021.
4. The Commission had approved the ARR, ERC and Revenue gap of KSEB Ltd. for the MYT period from 2022-23 to 2026-27 (hereinafter referred as MYT Order dated 25-6-2022), strictly as per the provisions of the Tariff Regulations, 2021. The Commission has also determined the retail tariff of the electricity consumers in the State of Kerala for the period from 26-6-2022 to 31-3-2023 to bridge the approved revenue as per the MYT Order dated 25-6-2022. The Commission has also directed KSEB Ltd. to file separate petition for the determination of tariff for the remaining periods of the MYT from 1-4-2023 to 31-3-2027 based on the approved revenue gap as per the MYT Order dated 25-6-2022.
5. In compliance of the directions of the Commission, KSEB Ltd. on 8-2-2023 had filed the petition OP No. 18/2023 for approval of the retail tariff, for the remaining MYT period from FY 2023-24 to FY 2026-27 to bridge the approved revenue gap as per the MYT Order dated 25-6-2022.
6. During the deliberation of the subject petition OP No. 18/2023, the HT and EHT Industrial Consumers Association of Kerala had filed a Writ Petition WP(C) No. 19205 of 2023, before the Hon'ble High Court, against the tariff determination process initiated by the Kerala State Electricity Regulatory Commission. The Hon'ble High Court vide the judgment dated 7th September 2023 has set aside Regulation 34 (iv) of the Tariff Regulations, 2021 citing the reason that, there is substantial difference in the Draft Tariff Regulations, 2021 notified on 6th August 2021 and the final Tariff Regulations, 2021 notified on 16th November, 2021, in the matter of approval of the repayment of principal amount on Master Trust Bonds to be charged on to the ARR is concerned. Hon'ble High Court further observed that, substantial difference in the final Regulations from the Draft Regulations to the aforesaid extent do not conform to the requirement of Section 181 (3) of the Electricity Act, 2003 and Electricity (Procedures for Previous Publication) Rules, 2005.



7. Further, Hon'ble High Court vide the judgment dated 7th September 2023 in WP(C) No. 19205/2023 has granted liberty to the Commission to specify the terms and conditions for the determination of tariff as regards to the repayment of principal amount on Master Trust Bonds after complying with the requirement of Section 181(3) of the Electricity Act, 2003, Electricity (Procedures for Previous Publication) Rules, 2005 and in accordance with the law.
8. In view of the liberty granted by the Hon'ble High Court, the Commission relooked into the matter of specifying the repayment of principal amount on Master Trust Bonds and examined the entire issue of Master Trust bonds in its totality. The Commission has seen that without granting approval of the recovery of the principal repayment of the 20 year bond of Rs 8144.00 crore @10% per annum issued by KSEB Ltd. to the Master Trust, the licensee could not even meet partially its pension payment obligations. In view of the detailed examination, the Commission has published the Draft KSERC (Terms and Conditions for Determination of Tariff) (Second Amendment) Regulations, 2023 in the website of the Commission 1-12-2023, for inviting stakeholder comments and objections. The Commission has also published detailed explanatory memorandum along with the draft Amendment Regulations, which details the facts and circumstances led to the publication of the draft amendment regulation, in view of the liberty granted by the Hon'ble High Court. Further the Commission has conducted a hearing on the draft Regulations on 4-1-2024 through hybrid mode.
9. After considering all the suggestions and objections received from the stakeholders, the Commission approved the Kerala State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) (Second Amendment) Regulations, 2024 and decided to publish the approved amendment in the Official Gazette. The Statement of Reasons is published separately.

